

REMARKS

Claims 1-20 are pending. The Examiner's reconsideration of the rejections is respectfully requested in view of the amendments and remarks.

Claims 1-10 have been rejected under 35 USC 101 as being directed to non-statutory subject matter.

Claim 1 claims, *inter alia*, "executing a business process that comprises an integrated set of applications that enable interactions between a plurality of entities; and managing the execution of the business process using business commitment specifications that describe one or more business commitments among said entities, wherein the business commitments are defined using KPIs (Key Performance Indicators) and wherein KPIs are defined using probe points."

Since the claims at issue in this case are directed to a process, a structural inquiry is unnecessary. (see *AT&T Corp. v. Excel Communications Inc.*, 172 F.3d 1352 (Fed. Cir. 1999)). The business process that comprises an integrated set of applications that enable interactions between a plurality of entities is believed to be tangible and concrete without needing, for example, to be stored in a memory device to be executed by a computer process. For reference purposes consider a claim at issue in *AT&T* (USPN 5,333,184):

"A method for use in a telecommunications system in which interexchange calls initiated by each subscriber are automatically routed over the facilities of a particular one of a plurality of interexchange carriers associated with that subscriber, said method comprising the steps of:

generating a message record for an interexchange call between an originating subscriber and a terminating subscriber, and including, in said message record, a primary interexchange carrier (PIC) indicator having a value which is a function of whether or not the interexchange carrier associated with said terminating subscriber is a predetermined one of said interexchange carriers.”

The court in *AT&T* stated that, "AT&T is only claiming a process that uses the Boolean principle in order to determine the value of the PIC indicator. The PIC indicator represents information about the call recipient's PIC, a useful, nonabstract result that facilitates differential billing of long-distance calls made by an [interexchange carrier's] subscriber. Because the claimed process applies the Boolean principle to produce a useful, concrete, tangible result without pre-empting other uses of the mathematical principle, on its face the claimed process comfortably falls within the scope of section 101." 172 F.3d at 1358. In Claim 1 of the present case, business process is managed using business commitment specifications that describe one or more business commitments defined using KPIs (Key Performance Indicators); the management of the business process using KPIs is believed to be a useful, concrete and tangible result, for example, in business process management methodologies including Six Sigma, among others.

Thus, for the reasons given above, Claim 1 is believed to be directed to statutory subject matter and therefore satisfy 35 USC 101. Claims 2-10 depend from Claim 1 and are believed to be directed to statutory subject matter for at least the reasons given for Claim 1. The Examiner's reconsideration of the rejection is respectfully requested.

Claims 1-20 have been rejected under 35 USC 103(a) as being unpatentable over Stowell et al. (US Patent App. 20020099579). The Examiner stated essentially that Stowell teaches or suggests all the limitations of Claims 1-20.

Claims 1 and 11 claim, *inter alia*, “managing the execution of the business process using business commitment specifications that describe one or more business commitments among said entities, wherein the business commitments are defined using KPIs (Key Performance Indicators) and wherein KPIs are defined using probe points, the probe points comprising a logical locator inside the business process for reporting process data to a process monitoring/control system for calculating the KPIs.”

Stowell teaches a stateless, event-monitoring server system for use in monitoring performance between buyers and suppliers (see Abstract). Stowell does not teach or suggest “probe points comprising a logical locator inside the business process for reporting process data to a process monitoring/control system for calculating the KPIs” as claimed in Claims 1 and 11. Stowell teaches that KPIs are calculated from the data extracted from standard business documents (see paragraph [0014]). More particularly, Stowell teaches that when messages pass through supply chain performance management server system 12, those messages maybe loaded into the repository where tests are run to determine whether KPI thresholds have been violated (see paragraph [0104]). Thus, Stowell relies on a message passing through a certain server before a KPI may be calculated- Stowell’s method is passive. Stowell does not teach or suggest reporting of process data, much less, a probe points comprising a logical locator inside the business process for reporting process data as claimed in Claim 1 and 11.

Referring to Claims 1 and 11, the Examiner has taken Official Notice that it is old and well known in the art [to use] KPI (Key Performance Indicator) to define probe points.

Respectfully, as claimed, KPIs are defined using probe points. In addition, Applicants respectfully traverse the finding of Official Notice. For example, Stowell teaches that messages pass need to through supply chain performance management server system before testing to determine whether KPI thresholds have been violated (see paragraph [0104]). Such a server is not believed to be “inside the business process” as the claimed probe points. If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. Such an affidavit is respectfully requested.

Claims 2-10 depend from Claim 1. Claims 12-20 depend from Claim 11. The dependent claims are believed to be allowable for at least the reasons given for the independent claims.

Referring to Claims 3 and 13, the Examiner has taken Official Notice that it is old and well known in the art to monitor a probe point associated with a business process, and determining a value of a KPI when a probe point, which is associated with the KPI, is activated. Applicants respectfully traverse the finding of Official Notice for at least the reasons given above for Claims 1 and 11. If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. Such an affidavit is respectfully requested.

At least Claims 3, 6, 13, and 16 are believed to be allowable for additional reasons.

Claims 3 and 13 claim, *inter alia*, “reporting process data from at least one probe point associated with the business process upon activation of the at least one prove point; determining

a value of a KPI associated with the at least one probe point based on the process data.” Claims 6 and 16 claim, “wherein the instructions for determining a value of a KPI comprise instructions for determining the value of the KPI based on a value reported from a probe point.”

Stowell teaches a stateless, event-monitoring server system for use in monitoring performance between buyers and suppliers (see Abstract). Stowell does not teach or suggest “reporting process data from at least one probe point associated with the business process upon activation of the at least one probe point; determining a value of a KPI associated with the at least one probe point based on the process data” as claimed in Claims 3 and 13, nor “determining a value of a KPI comprise instructions for determining the value of the KPI based on a value reported from a probe point” as claimed in Claims 6 and 16. As noted with respect to Claims 1 and 11 above, Stowell relies on a message passing through a certain server before a KPI may be calculated-Stowell’s method is passive. Therefore, Stowell does not teach or suggest all the limitations of Claims 3, 6, 13, and 16.

Reconsideration of the rejection is respectfully requested.

For the forgoing reasons, the application, including claims 1-20, is believed to be in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

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